

1 CENTER FOR DISABILITY ACCESS

Ray Ballister, Cal. Bar No. 111282

2 Russell Handy, Cal. Bar No. 166317

Phyl Grace, Cal. Bar No. 171771

3 Dennis Price, Cal. Bar No. 279082

PO Box 262490

4 San Diego, CA 92196-2490

Delivery: 9845 Erma Road, Ste. 300

5 San Diego, CA 92131

Telephone: 858.375.7385

6 Facsimile: 888.422.5191

phylg@potterhandy.com

7 Attorneys for Plaintiff

8 RICARDO MURILLO

9 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

A Limited Liability Partnership

Including Professional Corporations

10 GREGORY F. HURLEY, Cal. Bar No. 126791

ghurley@sheppardmullin.com

11 MICHAEL J. CHILLEEN, Cal. Bar No. 210704

mchilleen@sheppardmullin.com

12 650 Town Center Drive, 4th Floor

13 Costa Mesa, California 92626-1993

Telephone: 714.513.5100

14 Facsimile: 714.513.5130

15 Attorneys for Defendant LIVE NATION

ENTERTAINMENT, INC.

17 UNITED STATES DISTRICT COURT

18 CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

20 Ricardo Murillo,

21 Plaintiff,

22 v.

23 Live Nation Entertainment, Inc., a
Delaware Corporation; and Does 1-10,

24 Defendants.

Case No. 2:17-cv-00875-FMO (SKx)

**[PROPOSED] CONFIDENTIALITY
AND PROTECTIVE ORDER**

Action Filed:

February 3, 2017

Trial Date:

None Set

1 1. A. PURPOSES AND LIMITATIONS

2 Discovery in this action is likely to involve production of confidential, proprietary,
3 or private information for which special protection from public disclosure and from use for
4 any purpose other than prosecuting this litigation may be warranted. Accordingly, the
5 parties hereby stipulate to and petition the Court to enter the following Stipulated
6 Protective Order. The parties acknowledge that this Order does not confer blanket
7 protections on all disclosures or responses to discovery and that the protection it affords
8 from public disclosure and use extends only to the limited information or items that are
9 entitled to confidential treatment under the applicable legal principles. The parties further
10 acknowledge, as set forth in Section 12.3, below, that this Stipulated Protective Order does
11 not entitle them to file confidential information under seal; Civil Local Rule 79-5 sets forth
12 the procedures that must be followed and the standards that will be applied when a party
13 seeks permission from the court to file material under seal.

14 B. GOOD CAUSE STATEMENT

15 This action is likely to involve trade secrets, customer and pricing lists and other
16 valuable research, development, commercial, financial, technical and/or proprietary
17 information for which special protection from public disclosure and from use for any
18 purpose other than prosecution of this action is warranted. Such confidential and
19 proprietary materials and information consist of, among other things, confidential business
20 or financial information, information regarding confidential business practices, or other
21 confidential research, development, or commercial information (including information
22 implicating privacy rights of third parties), information otherwise generally unavailable to
23 the public, or which may be privileged or otherwise protected from disclosure under state
24 or federal statutes, court rules, case decisions, or common law. Accordingly, to expedite
25 the flow of information, to facilitate the prompt resolution of disputes over confidentiality
26 of discovery materials, to adequately protect information the parties are entitled to keep
27 confidential, to ensure that the parties are permitted reasonable necessary uses of such
28 material in preparation for and in the conduct of trial, to address their handling at the end

1 of the litigation, and serve the ends of justice, a protective order for such information is
 2 justified in this matter. It is the intent of the parties that information will not be designated
 3 as confidential for tactical reasons and that nothing be so designated without a good faith
 4 belief that it has been maintained in a confidential, non-public manner, and there is good
 5 cause why it should not be part of the public record of this case.

6 2. DEFINITIONS

7 2.1 Action: *Ricardo Murillo v. Live Nation Entertainment, Inc.*, Case No. 2:17-
 8 cv-00875-FMO-SK.

9 2.2 Challenging Party: a Party or Non-Party that challenges the designation of
 10 information or items under this Order.

11 2.3 “CONFIDENTIAL” Information or Items: information (regardless of how it
 12 is generated, stored or maintained) or tangible things that qualify for protection under
 13 Federal Rule of Civil Procedure 26(c), and as specified above in the Good Cause
 14 Statement.

15 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as their
 16 support staff).

17 2.5 Designating Party: a Party or Non-Party that designates information or items
 18 that it produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

19 2.6 Disclosure or Discovery Material: all items or information, regardless of the
 20 medium or manner in which it is generated, stored, or maintained (including, among other
 21 things, testimony, transcripts, and tangible things), that are produced or generated in
 22 disclosures or responses to discovery in this matter.

23 2.7 Expert: a person with specialized knowledge or experience in a matter
 24 pertinent to the litigation who has been retained by a Party or its counsel to serve as an
 25 expert witness or as a consultant in this Action.

26 2.8 House Counsel: attorneys who are employees of a party to this Action.
 27 House Counsel does not include Outside Counsel of Record or any other outside counsel.
 28

1 2.9 Non-Party: any natural person, partnership, corporation, association, or other
2 legal entity not named as a Party to this action.

3 2.10 Outside Counsel of Record: attorneys who are not employees of a party to
4 this Action but are retained to represent or advise a party to this Action and have appeared
5 in this Action on behalf of that party or are affiliated with a law firm which has appeared
6 on behalf of that party, and includes support staff.

7 2.11 Party: any party to this Action, including all of its officers, directors,
8 employees, consultants, retained experts, and Outside Counsel of Record (and their support
9 staffs).

10 2.12 Producing Party: a Party or Non-Party that produces Disclosure or Discovery
11 Material in this Action.

12 2.13 Professional Vendors: persons or entities that provide litigation support
13 services (e.g., photocopying, videotaping, translating, preparing exhibits or
14 demonstrations, and organizing, storing, or retrieving data in any form or medium) and
15 their employees and subcontractors.

16 2.14 Protected Material: any Disclosure or Discovery Material that is designated
17 as “CONFIDENTIAL.”

18 2.15 Receiving Party: a Party that receives Disclosure or Discovery Material from
19 a Producing Party.

20 3. SCOPE

21 The protections conferred by this Stipulation and Order cover not only Protected
22 Material (as defined above), but also (1) any information copied or extracted from
23 Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected
24 Material; and (3) any testimony, conversations, or presentations by Parties or their Counsel
25 that might reveal Protected Material.

26 Any use of Protected Material at trial shall be governed by the orders of the trial
27 judge. This Order does not govern the use of Protected Material at trial.

28 4. DURATION

1 Even after final disposition of this litigation, the confidentiality obligations
 2 imposed by this Order shall remain in effect until a Designating Party agrees otherwise in
 3 writing or a court order otherwise directs. Final disposition shall be deemed to be the later
 4 of (1) dismissal of all claims and defenses in this Action, with or without prejudice; and (2)
 5 final judgment herein after the completion and exhaustion of all appeals, rehearings,
 6 remands, trials, or reviews of this Action, including the time limits for filing any motions
 7 or applications for extension of time pursuant to applicable law.

8 5. DESIGNATING PROTECTED MATERIAL

9 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each
 10 Party or Non-Party that designates information or items for protection under this Order
 11 must take care to limit any such designation to specific material that qualifies under the
 12 appropriate standards. The Designating Party must designate for protection only those
 13 parts of material, documents, items, or oral or written communications that qualify so that
 14 other portions of the material, documents, items, or communications for which protection
 15 is not warranted are not swept unjustifiably within the ambit of this Order.

16 Mass, indiscriminate, or routinized designations are prohibited. Designations that
 17 are shown to be clearly unjustified or that have been made for an improper purpose (e.g.,
 18 to unnecessarily encumber the case development process or to impose unnecessary
 19 expenses and burdens on other parties) may expose the Designating Party to sanctions.

20 If it comes to a Designating Party's attention that information or items that it
 21 designated for protection do not qualify for protection, that Designating Party must
 22 promptly notify all other Parties that it is withdrawing the inapplicable designation.

23 5.2 Manner and Timing of Designations. Except as otherwise provided in this
 24 Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or
 25 ordered, Disclosure or Discovery Material that qualifies for protection under this Order
 26 must be clearly so designated before the material is disclosed or produced.

27 Designation in conformity with this Order requires:
 28

(a) for information in documentary form (e.g., paper or electronic documents, but excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing Party affix at a minimum, the legend “CONFIDENTIAL” (hereinafter “CONFIDENTIAL legend”), to each page that contains protected material. If only a portion or portions of the material on a page qualifies for protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by making appropriate markings in the margins).

A Party or Non-Party that makes original documents available for inspection need not designate them for protection until after the inspecting Party has indicated which documents it would like copied and produced. During the inspection and before the designation, all of the material made available for inspection shall be deemed “CONFIDENTIAL.” After the inspecting Party has identified the documents it wants copied and produced, the Producing Party must determine which documents, or portions thereof, qualify for protection under this Order. Then, before producing the specified documents, the Producing Party must affix the “CONFIDENTIAL legend” to each page that contains Protected Material. If only a portion or portions of the material on a page qualifies for protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by making appropriate markings in the margins).

(b) for testimony given in depositions that the Designating Party identify the Disclosure or Discovery Material on the record, before the close of the deposition all protected testimony.

(c) for information produced in some form other than documentary and for any other tangible items, that the Producing Party affix in a prominent place on the exterior of the container or containers in which the information is stored the legend “CONFIDENTIAL.” If only a portion or portions of the information warrants protection, the Producing Party, to the extent practicable, shall identify the protected portion(s).

5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to designate qualified information or items does not, standing alone, waive the Designating

1 Party's right to secure protection under this Order for such material. Upon timely
 2 correction of a designation, the Receiving Party must make reasonable efforts to assure
 3 that the material is treated in accordance with the provisions of this Order.

4 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

5 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation
 6 of confidentiality at any time that is consistent with the Court's Scheduling Order.

7 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
 8 resolution process under Local Rule 37.1 et seq.

9 6.3 The burden of persuasion in any such challenge proceeding shall be on the
 10 Designating Party. Frivolous challenges, and those made for an improper purpose (e.g., to
 11 harass or impose unnecessary expenses and burdens on other parties) may expose the
 12 Challenging Party to sanctions. Unless the Designating Party has waived or withdrawn the
 13 confidentiality designation, all parties shall continue to afford the material in question the
 14 level of protection to which it is entitled under the Producing Party's designation until the
 15 Court rules on the challenge.

16 7. ACCESS TO AND USE OF PROTECTED MATERIAL

17 7.1 Basic Principles. A Receiving Party may use Protected Material that is
 18 disclosed or produced by another Party or by a Non-Party in connection with this Action
 19 only for prosecuting, defending, or attempting to settle this Action. Such Protected
 20 Material may be disclosed only to the categories of persons and under the conditions
 21 described in this Order. When the Action has been terminated, a Receiving Party must
 22 comply with the provisions of section 13 below (FINAL DISPOSITION).

23 Protected Material must be stored and maintained by a Receiving Party at a location
 24 and in a secure manner that ensures that access is limited to the persons authorized under
 25 this Order.

26 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise
 27 ordered by the court or permitted in writing by the Designating Party, a Receiving Party
 28 may disclose any information or item designated "CONFIDENTIAL" only to:

1 (a) the Receiving Party's Outside Counsel of Record in this Action, as well as
 2 employees of said Outside Counsel of Record to whom it is reasonably necessary to
 3 disclose the information for this Action;

4 (b) the officers, directors, and employees (including House Counsel) of the
 5 Receiving Party to whom disclosure is reasonably necessary for this Action;

6 (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure
 7 is reasonably necessary for this Action and who have signed the "Acknowledgment and
 8 Agreement to Be Bound" (Exhibit A);

9 (d) the court and its personnel;

10 (e) court reporters and their staff;

11 (f) professional jury or trial consultants, mock jurors, and Professional Vendors
 12 to whom disclosure is reasonably necessary for this Action and who have signed the
 13 "Acknowledgment and Agreement to Be Bound" (Exhibit A);

14 (g) the author or recipient of a document containing the information or a
 15 custodian or other person who otherwise possessed or knew the information;

16 (h) during their depositions, witnesses, and attorneys for witnesses, in the Action
 17 to whom disclosure is reasonably necessary provided: (1) the deposing party requests that
 18 the witness sign the form attached as Exhibit 1 hereto; and (2) they will not be permitted to
 19 keep any confidential information unless they sign the "Acknowledgment and Agreement
 20 to Be Bound" (Exhibit A), unless otherwise agreed by the Designating Party or ordered by
 21 the court. Pages of transcribed deposition testimony or exhibits to depositions that reveal
 22 Protected Material may be separately bound by the court reporter and may not be disclosed
 23 to anyone except as permitted under this Stipulated Protective Order; and

24 (i) any mediator or settlement officer, and their supporting personnel, mutually
 25 agreed upon by any of the parties engaged in settlement discussions.

26 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED
 27 IN OTHER LITIGATION
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1 If a Party is served with a subpoena or a court order issued in other litigation that
2 compels disclosure of any information or items designated in this Action as
3 “CONFIDENTIAL,” that Party must:

4 (a) promptly notify in writing the Designating Party. Such notification shall
5 include a copy of the subpoena or court order;

6 (b) promptly notify in writing the party who caused the subpoena or order to
7 issue in the other litigation that some or all of the material covered by the subpoena or
8 order is subject to this Protective Order. Such notification shall include a copy of this
9 Stipulated Protective Order; and

10 (c) cooperate with respect to all reasonable procedures sought to be pursued by
11 the Designating Party whose Protected Material may be affected.

12 If the Designating Party timely seeks a protective order, the Party served with the
13 subpoena or court order shall not produce any information designated in this action as
14 “CONFIDENTIAL” before a determination by the court from which the subpoena or order
15 issued, unless the Party has obtained the Designating Party’s permission. The Designating
16 Party shall bear the burden and expense of seeking protection in that court of its
17 confidential material and nothing in these provisions should be construed as authorizing or
18 encouraging a Receiving Party in this Action to disobey a lawful directive from another
19 court.

20 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE
21 PRODUCED IN THIS LITIGATION

22 (a) The terms of this Order are applicable to information produced by a Non-
23 Party in this Action and designated as “CONFIDENTIAL.” Such information produced by
24 Non-Parties in connection with this litigation is protected by the remedies and relief
25 provided by this Order. Nothing in these provisions should be construed as prohibiting a
26 Non-Party from seeking additional protections.

27 (b) In the event that a Party is required, by a valid discovery request, to produce
28 a Non-Party’s confidential information in its possession, and the Party is subject to an

1 agreement with the Non-Party not to produce the Non-Party's confidential information,
2 then the Party shall:

3 (1) promptly notify in writing the Requesting Party and the Non-Party that some
4 or all of the information requested is subject to a confidentiality agreement with a Non-
5 Party;

6 (2) promptly provide the Non-Party with a copy of the Stipulated Protective
7 Order in this Action, the relevant discovery request(s), and a reasonably specific
8 description of the information requested; and

9 (3) make the information requested available for inspection by the Non-Party, if
10 requested.

11 (c) If the Non-Party fails to seek a protective order from this court within 14
12 days of receiving the notice and accompanying information, the Receiving Party may
13 produce the Non-Party's confidential information responsive to the discovery request. If
14 the Non-Party timely seeks a protective order, the Receiving Party shall not produce any
15 information in its possession or control that is subject to the confidentiality agreement with
16 the Non-Party before a determination by the court. Absent a court order to the contrary, the
17 Non-Party shall bear the burden and expense of seeking protection in this court of its
18 Protected Material.

19 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

20 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
21 Protected Material to any person or in any circumstance not authorized under this
22 Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing the
23 Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all
24 unauthorized copies of the Protected Material, (c) inform the person or persons to whom
25 unauthorized disclosures were made of all the terms of this Order, and (d) request such
26 person or persons to execute the "Acknowledgment and Agreement to Be Bound" that is
27 attached hereto as Exhibit A.
28

1 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
2 PROTECTED MATERIAL

3 When a Producing Party gives notice to Receiving Parties that certain inadvertently
4 produced material is subject to a claim of privilege or other protection, the obligations of
5 the Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B).
6 This provision is not intended to modify whatever procedure may be established in an e-
7 discovery order that provides for production without prior privilege review. Pursuant to
8 Federal Rule of Evidence 502(d) and (e), insofar as the parties reach an agreement on the
9 effect of disclosure of a communication or information covered by the attorney-client
10 privilege or work product protection, the parties may incorporate their agreement in the
11 stipulated protective order submitted to the court.

12 12. MISCELLANEOUS

13 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
14 person to seek its modification by the Court in the future.

15 12.2 Right to Assert Other Objections. By stipulating to the entry of this
16 Protective Order no Party waives any right it otherwise would have to object to disclosing
17 or producing any information or item on any ground not addressed in this Stipulated
18 Protective Order. Similarly, no Party waives any right to object on any ground to use in
19 evidence of any of the material covered by this Protective Order.

20 12.3 Filing Protected Material. A Party that seeks to file under seal any Protected
21 Material must comply with Civil Local Rule 79-5. Protected Material may only be filed
22 under seal pursuant to a court order authorizing the sealing of the specific Protected
23 Material at issue. If a Party's request to file Protected Material under seal is denied by the
24 court, then the Receiving Party may file the information in the public record unless
25 otherwise instructed by the court.

26 13. FINAL DISPOSITION

27 After the final disposition of this Action, as defined in paragraph 4, within 60 days
28 of a written request by the Designating Party, each Receiving Party must return all

1 Protected Material to the Producing Party or destroy such material. As used in this
 2 subdivision, "all Protected Material" includes all copies, abstracts, compilations,
 3 summaries, and any other format reproducing or capturing any of the Protected Material.
 4 Whether the Protected Material is returned or destroyed, the Receiving Party must submit a
 5 written certification to the Producing Party (and, if not the same person or entity, to the
 6 Designating Party) by the 60 day deadline that (1) identifies (by category, where
 7 appropriate) all the Protected Material that was returned or destroyed and (2) affirms that
 8 the Receiving Party has not retained any copies, abstracts, compilations, summaries or any
 9 other format reproducing or capturing any of the Protected Material. Notwithstanding this
 10 provision, Counsel are entitled to retain an archival copy of all pleadings, motion papers,
 11 trial, deposition, and hearing transcripts, legal memoranda, correspondence, deposition and
 12 trial exhibits, expert reports, attorney work product, and consultant and expert work
 13 product, even if such materials contain Protected Material. Any such archival copies that
 14 contain or constitute Protected Material remain subject to this Protective Order as set forth
 15 in Section 4 (DURATION).

16 14. Any violation of this Order may be punished by any and all appropriate
 17 measures including, without limitation, contempt proceedings and/or monetary sanctions.
 18

19 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

20 DATED: 07/28/17
 21

22 /s/ Sara Gunderson

Attorneys for Plaintiff

23 RICARDO MURILLO

24 DATED: 07/28/17
 25

26 /s/ Gregory F. Hurley

Attorneys for Defendant

27 LIVE NATION ENTERTAINMENT, INC.
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1 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

2
3 DATED: July 31, 2017

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5 _____
6 Honorable Steve Kim
7 United States Magistrate Judge
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EXHIBIT A**ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

I, _____, of _____, declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Central District of California on _____ in the case of *Ricardo Murillo v. Live Nation Entertainment, Inc.*, Case No. 2:17-cv-00875-FMO-SK. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Central District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action. I hereby appoint _____ of _____ located at _____, Telephone Number: _____ as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____